

International Status of the Ecumenical Patriarchate

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I

The Patriarch of Constantinople, who has the title of “Archbishop of Constantinople the New Rome, Ecumenical Patriarch,” is the spiritual leader of the Orthodox Church all over the world. In addition to his spiritual authority recognized by the Orthodox Church, he also exercises ecclesiastical power over the Orthodox minorities in Turkey.¹

The Greek Orthodox Church has three other Patriarchs, besides the Patriarch of Constantinople, at Antioch, Alexandria, and Jerusalem. Canonically, the four are all equal,² but the three last mentioned allow an honorary precedence to the Patriarch of Constantinople. He is elected and consecrated by the Holy Synod (Ιερά Σύνοδος), which is considered the sacred college of the Ecumenical Throne. It is composed of twelve Archbishops, and its functions consist in superintending with the Patriarch, and the maintenance of ecclesiastical discipline. It gives its decisions in the form of decrees or of synodical letters.

As it was mentioned above, the Ecumenical Patriarch is the primate of all the Christian Orthodox Churches.³ In this capacity, he deals with the Heads of the autocephalous Orthodox Churches on all questions relating to faith, Christian morals, and ecclesiastical law. In these matters, the views and authority of the Ecumenical Patriarch are of predominant importance.

The Ecumenical Patriarch is the chief of all the Metropolitans, Archbishops and Bishops belonging to the system of the Great Church which has its see in the city of Constantinople,⁴ and is the first of all the autocephalous Orthodox Churches. The Patriarch, surrounded by the Permanent Holy Synod, governs the Church from the Ecumenical Throne. He nominates, consecrates, judges, and deposes Archbishops and Bishops within the sphere of his Church and Abbots of patriarchal convents and monasteries. Within his jurisdiction also lies the settlements of all ecclesiastical questions that are outside the competence of the archbishops residing in the various dioceses dependent on the Ecumenical Throne. As the Archbishop of Constantinople, he also exercises his pastoral rights over his entire diocese in the same manner as any other Archbishop or Bishop. The above rights and privileges are united in the single person of the Patriarch and are derived from the Holy Ecumenical Councils.

The Ecumenical Patriarchate,⁵ which from the very beginning and at all times has had its seat in Constantinople, was established by the Second [Canon 3], Fourth [Canon 28], Fifth and Sixth [Canon 37] Ecumenical Synods. It continued to function under these charters, throughout the whole period of the Byzantine Empire and the centuries of Turkish rule up to the present time.

The Patriarchate is the only ecclesiastical authority in Orthodoxy which has the right to call together, in concert with the other Orthodox Churches, pan-Orthodox conferences, pro-synods and Ecumenical Synods.

The seat of the Patriarchate is in the Greek suburb of Istanbul, the Phanar.⁶ Here, amid a group of buildings, with the Greek college on the hill behind, stands the Greek Cathedral of St. George and the official residence of the Patriarch.



Phanar Greek Orthodox College (Est. 1454), Istanbul

II

The seat of the Patriarch fell vacant for two years, when the ancient city of Constantinople succumbed to the invading Turks (1453). But this situation did not continue long. Muhammed the Conqueror thought it fit to confer with the Greek leaders and his directions are quite opposite.⁷ The Conqueror directed them to elect a Patriarch of their own choice.

The Holy Synod chose a monk named Gennadius. When the Sultan heard about this choice, he invited Gennadius and the clergy for a conference. On that occasion he presented a precious scepter to Gennadius and said: "Be Patriarch, and may Heaven protect you! On every occasion count upon my friendship and enjoy all the privileges possessed by your predecessors."⁸ These words were the charter of the Greek privileges, upon which was based the considerable civil jurisdiction which the Patriarch and his tribunals had always enjoyed. The history of the Patriarchate unmistakably shows that whenever these privileges⁹ were disputed or its authority challenged, those words of the Sultan were cited as the authority for its exercise.¹⁰ One of the

purposes of this recognition of the Patriarch was to bring together the various elements of the states as compact, homogenous entities.

The Patriarch was given the title "Mil'let Bashi," or head of the nation,¹¹ and the Turkish title "Rutbetlu" which means "His Holiness,"¹² and was ranked as a vizier with a janissary guard. Thus the Patriarch became in effect the Pope of the Eastern Church.

The Hatti-sharif, issued at the installation of Gennadius, contains in detail the prerogatives of the office of the Patriarch. This gave him, *inter alia*, judicial powers as head of the Greek community, with plenary powers to decide all civil, criminal, correctional, and other causes affecting marriage, divorces, legacies, and testaments between two or more Greeks.¹³

Though from the point of view of European law, the position of foreigners in the East was considered as privileged, in fact, these so-called privileges at their origin, were necessitated by the feasibility of the application exclusively to Moslems of Islamic ideas, jurisprudence, and laws belonging solely to the sphere of religion. This is the main reason why the Turks, at the time of the conquest of Constantinople, granted to the conquered population who remained subject to the Empire the freedom to practice their religion. Those "privileges" accorded by the Conqueror, were not so much privileges as rights. They proceeded from no act of grace but were strictly in pursuance of the fundamental principles and tenets of the Islamic teaching. ¹⁴

The regime of Muhammed the Conqueror has an important bearing on the status of the Patriarchate. For centuries after Muhammed, the Patriarchs referred to his regime to justify the existence of their privileges. But the reason which prompted him to grant those privileges was a matter of considerable conflict of opinion.¹⁵ For instance, it was sought to be argued that Turks granted them for political reasons lest the union of the Churches should rouse European sentiments against them. But it is more reasonable to consider the reasons as based purely on religious considerations, even more so when the Conqueror granted similar privileges to the Armenian Patriarch and even to the Grand Rabbi at a time when the Jews were being persecuted in Christian Europe.¹⁶

The Greek Patriarchate was soon recognized by Turkey as the representative authority of all the Christian subjects of the Ottoman Empire.¹⁷ The office of the Patriarch¹⁸ discharged functions both religious and secular. It organized education; it dealt with such civil matters as marriage, wardship, inheritance, registration of births and deaths; and had courts of justice covering substantially the field of civil law. At a time when the Ottoman Empire extended far and wide, bringing within its ambit heterogeneous nations, the above system proved very convenient. But eventually, when the Christian nations of that Empire one by one attained their independence, this system gradually became an anachronism.¹⁹ In the case of the Ecumenical Patriarchate it was alleged by some Turks and foreigners that in the new national Turkish State

there was no place for such an institution, particularly as the holder of the office was generally believed to be the chief center of the political agitation which hampered the Turks in their national struggle with Greece.²⁰

It is not certain that the Ecumenical Patriarchate had ever engaged itself in political agitation against Turkey. It seems nevertheless true, that when some of the Great Powers after the First World War examined the possibility of detaching Constantinople from Turkey, the then Patriarch expressed his enthusiasm for the idea of encouraging the internationalization of the old city. This may be the only instance of the exercise by the Patriarchate of some kind of political activity hostile to the Ottoman Empire. During the entire period of more than five centuries in which the Patriarchate existed side by side with the Ottoman Empire, the activities of the Patriarchate were not on any occasion subject to scrutiny or complaint by the Turkish authorities. Except in the one instance mentioned above, the Patriarchate never failed in its loyalty to the Ottoman Empire. Though Gregory V, the Patriarch, was hanged in 1821 after the Greek insurrection, the execution, as a matter of fact, was not the result of any personal responsibility of the Patriarch for the insurrection. On the other hand, out of a deep sense of loyalty to the Government, the Patriarch had even advocated the excommunication of those Ottoman subjects who took part in the insurrection. Gregory V was executed as he was deemed to be the head of the Greek nation (*Mil'le Baschi*), recognized as such by the Ottoman Government.²¹

When the Caliphate was abolished in March, 1924, there was a strong popular demand in Turkey for expelling also the heads of the foreign religious communities.²² Nevertheless the Turkish Government observed the pledges given at Lausanne and Gregorios "achieved the feat, equalled by few of his predecessors in his holy office, of dying in harness."²³ Gregorios died on November 16, 1924, and on December 17, Mgr. Constantine VI Arapoghlu was elected to succeed him.



III

The question which deserves consideration now is, whether the Ecumenical Patriarchate has any international status, or if, constituted as it is by its very nature as an entity devoid of all real and effective political authority, it can enjoy a primordial prerogative of an institution of international interest.

The interest of the Great Powers for the protection of the Christian subjects in the Ottoman Empire was expressed in various bilateral or multilateral treaties of those Powers with Turkey. But until the eighteenth century those treaties did not provide a strong guarantee for the Christians.²⁴ But from 1740, treaty rights arising from capitulations were made perpetual, and hence, were not subject to further modification by succeeding Sultans. An important example was the Treaty of Küçük Kaynarca, of July 16, 1774. Under Article 7 of this treaty, the Sublime Porte "promises to protect constantly the Christian religion and churches and allow the ministers of Russia at Constantinople to make representation on their behalf." ²⁵ This most important provision gave to Russia for the first time a preferential right of protection of Christian "rayas," not conceded to any other Christian Power and a right of intervention on behalf of all the Christian population, which in effect amounted to Russia never in the future, up until the middle of the nineteenth century, failed to call for the implementation of these provisions.²⁷ Her intervention for such an enforcement became its fixed diplomatic policy with rather useful results for her beneficiaries, but not always free of political pursuances and selfishness. The Sultan, conscious sometimes of the inferiority of his military force, temporarily recognized the right for the Russian ambassador to intervene on their behalf. At any rate the Ecumenical Patriarchate became the most authentic representative Christian authority in the Ottoman Empire, the center of a great antagonism among the Great Powers and the field of a struggle for uncovered or conflicting pursuits. Protection of Christian minorities by the Great Powers, mistreatment of those minorities by Turks, keen political interest of Russia for the capture of Constantinople, and especially of the throne of the Ecumenical Patriarchate, and rivalry of England and other powers towards Russia, all these facts had a great influence on the Ecumenical Patriarchate which had to suffer or benefit depending on the particular situation.²⁸

The Law of Hatt-i Hümayün and the Subsequent Treaties

Under the law of Hatt-i Hümayün²⁹ of February 18, 1856, the relations between Church and State were regulated³⁰ and a promise of an international character was given by Turkey. The promise given by the Sublime Porte, to respect the privileges of the Christians, was officially communicated by her to the Great Powers. Thus, under this law and the Treaty of Paris of the same year, the privileges of the Christians in Turkey became a subject of international interest and character. Moreover, during the period following the Treaty of Paris, Christian Europe often intervened in the domestic affairs of Turkey, using as a pretext the protection of Christian

minorities. This incessant intervention of the European countries and the repeated assurances of protection by Turkey had created a customary international European law for the protection of those minorities³¹ .

Five years after the Hatt-i Hümayün, in 1861, there was issued a Vezirial Circular recalling to the local authorities the principles governing the rules of successions among Christians, and containing a paragraph, the faulty drafting of which was the cause of subsequent controversy, regarding their rights of testamentary disposition.³² In the year 1862, an important law regulating the privileges of the Orthodox community was promulgated in spite of repeated protests from the Patriarchate. This statute having been looked upon with disfavor by the Patriarchate from the very beginning, no attempt ever was made by the Patriarch to further its objectives. The statute, designed to be a measure of secularization, created a Mixed Council composed of four Metropolitans and eight lay representatives with jurisdiction to try questions relating to successions referred to it by the parties and authority to decide the validity of wills. But matters such as marriage, divorce, alimony, and those relating to the discipline of the clergy, were left to the exclusive jurisdiction of the Patriarch in Synod, a purely clerical tribunal.³³

After the Hatt-i Hümayün was passed, the Ecumenical Patriarchate was continually reorganized to keep in harmony with the pace of the new developments which were going on in Turkey. The next stage of reorganization of the Patriarchate came in 1908. In that year the Patriarchate was deprived of its capacity to represent the Orthodox Christian elements in Turkey to the Government of Sultan.³⁴ Subsequently the Convention of Lausanne circumscribed the powers of the Patriarchate to religious matters, with the only exception of matters relating to marriage and divorce. But the introduction of a system of civil marriage in Turkey on October 6, 1926, ultimately displaced even that last vestige of its political and judicial powers. Today it fulfills its purpose as a purely religious institution.

But in any attempt to define the status of the Patriarchate, it would be proper to take into consideration some of the important international treaties which followed the Treaty of Paris, such as the two protocols of London and the Treaty of Berlin. Under those treaties Turkey was clearly obliged to protect its Christian subjects, and the whole relation between her and its Christian minorities and the other Powers was based on the principles of the international law, as developed in the nineteenth and twentieth centuries.³⁵

Following the First World War the treaty of peace between the Allied Powers and Turkey was signed at Sèvres, on August 10, 1920.³⁶ That treaty contained particularly heavy terms for Turkey and especially strict provisions regarding the protection of the minorities.³⁷ But the Allies had been prepared to make concessions ever since the failure of the Treaty of Sèvres first became apparent. In March, 1922, the ministers of the Allied Powers at Paris had proposed substantial departures from the Treaty of Sèvres in a note that was almost apologetic in tone.

Two great objectives were, however, retained — protection of Christian minorities and freedom of the straits. Finally during the peace negotiations in 1922-23, there was suggested, among other things, the protection of religious and racial minorities in Turkey. While the protection of minorities was viewed favorably, unalterable opposition to the traditional policy of the capitulations was declared and upon this rock the conference broke.

Treaty of Sèvres



Borders of Turkey according to the unratified Treaty of Sèvres (1920) which was annulled and replaced by the Treaty of Lausanne (1923) in the aftermath of the Turkish War of Independence.

IV

The question of the Ecumenical Patriarchate was dramatically raised at the Peace Conference of Lausanne. The retention of the seat of the Patriarchate in Constantinople was the subject of a lengthy and interesting discussion in the sub-commission on Exchange of Populations.³⁸ The main stumbling block for the progress of the negotiations during the Lausanne Conference was the insistence of Turkey that the Patriarchate must be removed from Turkey. This move by Turkey naturally met with great opposition from all the delegations. The British were mindful of the repercussions such a drastic measure would have in the entire Christian world. They maintained that apart from wounding the religious sentiments, especially of the Orthodox, such removal would be likely to produce a most painful impression in England and elsewhere.³⁰

The delegate from France was not less vociferous in his protests. The removal of the Patriarch, the French delegate said, would leave the entire Orthodox community without its spiritual leader, since he is also Archbishop of Constantinople.⁴⁰ The United States delegate pointed out the formidable public opinion in America in favor of the retention of the Ecumenical Patriarchate.⁴¹

The Turkish delegation⁴² presented to the Sub-Commission a written declaration in which it was maintained, among other things, that the clergy and its hierarchical leader must not in the future concern themselves with any but purely spiritual matters. They also maintained that the Patriarchate must be transferred to some place outside the frontiers of Turkey. They further questioned the *raison d'être* of the institution, since, according to them, it had always been a political organ, and such an organ, they maintained, ceased to exist, when the political privileges which it formally enjoyed and the organic institutions which depended on it have been abolished.⁴³ The same delegation at another meeting of the Sub-Commission alleged that the Patriarchate had constantly indulged and would continue to indulge in political activities, and it, therefore, demanded its removal from Constantinople. They further alleged that the hostile contact of the Patriarchate during the last war convinced them beyond doubt that its continuance in Constantinople would only lead to further disturbances. They suggested as a solution the transfer of the Patriarchate to Mount Athos,⁴⁴ where it could exercise its spiritual influence over the Orthodox world.⁴⁵

The participation by Greece in any agreement for removal of the Patriarchate, the Greek delegation thought, would not have any legal basis, since the institution in question was Turkish and not Greek. ⁴⁶ The Greek delegation pointed out the legal basis of the claim of the Greeks in Turkey, apart from religion and sentimental considerations. The recognition of the rights of the Greeks dated back to the earliest times — a recognition in effect of the fundamental religious difference between the victor and the vanquished. Since *Sheriat* law, an exclusively Moslem religious law, could not be made applicable to the Christian, the Sultan recognized the legal right of the Christians to be governed by their own Canonical law, under the spiritual leadership of the Ecumenical Patriarch who alone has the divine authority (*jure canonico et facto*) to administer such laws. Furthermore, the Patriarchate, whose historic seat was Constantinople,⁴⁷ had been set up by the decrees of the second and fourth Ecumenical Councils, which formed the basis of the Canonical law of all Churches. It was also irremovable, and only the Ecumenical Council would give a decision on its maintenance or removal. The decisions, therefore, of a political conference in such matters could have no legal effect.⁴⁸ Finally, the delegation of the United States expressed the desire shown by a great part of American public opinion in favor of the retention of the Ecumenical Patriarchate at Constantinople⁴⁹ and associated themselves with the British viewpoint.⁵⁰

The Sub-Commission failed to bring about any measure of agreement between the two powers on this question, and invited the earnest attention of the Commission to this regrettable fact.



Commission and the Patriarchate

The Territorial and Military Commission discussed the question of the Ecumenical Patriarchate at its meeting of January 10, 1923.⁵¹ Lord Gurzon, the chairman, proposed⁵² that this institution would remain in Constantinople deprived in the future of its political and administrative character and remaining a purely religious institution. Thus there would not be any reason for the Turkish delegation to fear that the Patriarchate would use its powers for political purposes.⁵³

Mr. Diamandy of Roumania reminded the Commission that the Roumanian Church, being independent and autocephalous, was connected with the Ecumenical Patriarchate by spiritual bonds only. He also pointed out that the religious conscience of the Roumanian people would be wounded if arbitrary methods were employed against the Patriarchate, which had been established at Constantinople for centuries.⁵⁴

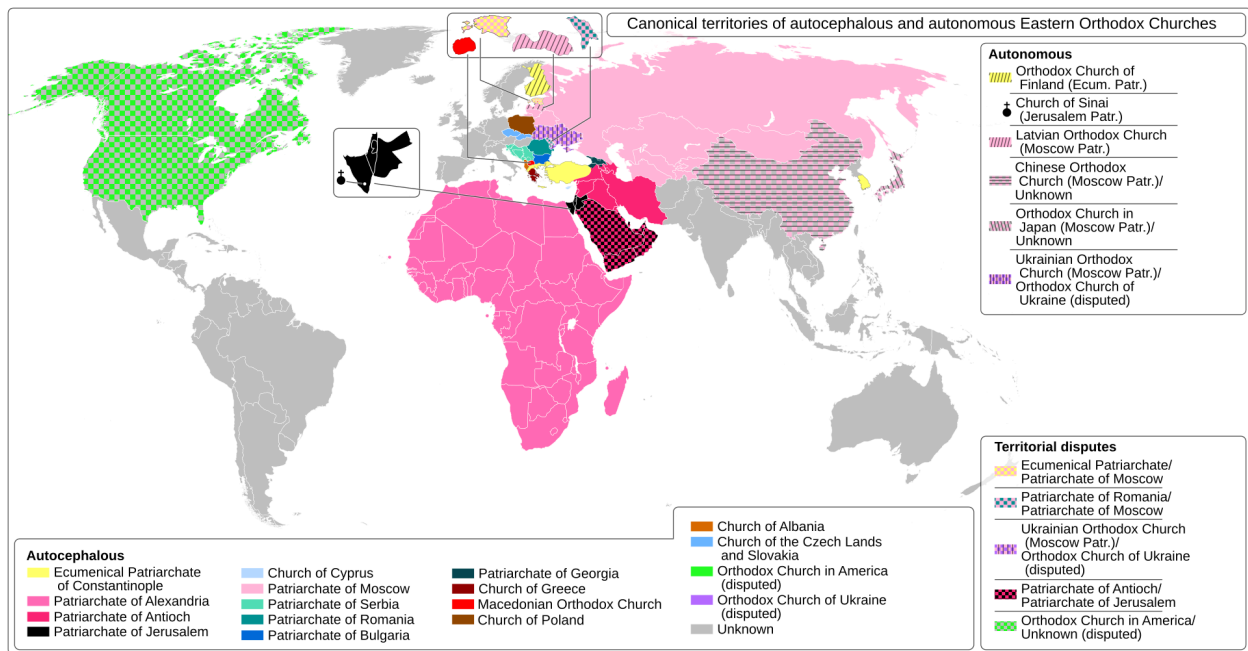
Mr. Rakitch of Yugoslavia pointed out that this institution had always played a most important part in the moral development of a certain portion of the human race. To many generations the Patriarchate had given guidance and assistance in matters of Christian morality in daily life. Its

removal would create a great moral void and it would stir the conscience of people of all religions. It would leave the blemish on the Turkish state to be the only one in the world to deny a proper place to a venerable Christian institution dating back many centuries with an uninterrupted record of activity in the cause of civilization and moral beneficence, even in the remote times of intolerance and religious persecution.⁵⁵

Mr. Veniselos of Greece, in reply to the argument of the Turkish delegation that the Patriarchate would always exercise political activity, pointed out that the institution in question had existed side by side with the Ottoman Empire for five centuries, and that this was the first occasion on which the Turkish Government had found cause to complain of its action.⁵⁶ As to the political privileges of the Patriarchate, he agreed upon their abolishment, pointing out that it was the Turkish Government itself that had once considered it desirable to grant the rights and privileges which were not at issue. It was up to the Turkish Government alone to deprive the Patriarch of his political authority as the head of the Greek nation, and to abrogate all provisions in the law giving the Patriarch political powers.⁵⁷ Mr. Veniselos, furthermore, reminded the Commission that the demand of the Turkish delegation went beyond the terms of the Angora Pact, which recognized that the non-Moslem minorities were entitled to the same guarantees as those granted to minorities by the European treaties. The Turkish Government, in its reply to the note from the Allied Governments of the September 23, 1922, had moreover once more undertaken to give these guarantees to the non-Moslem minorities. This was one of the conditions on which the Greek Government had consented to evacuate Eastern Thrace in favor of Turkey.⁵⁸

Ismet Pasha⁵⁹ of Turkey made reference before the Commission to the assurances given by the Allied and Greek delegations that the Patriarchate would refrain from activities of a political or administrative character, and would confine itself to purely religious activities. "With a view of giving a supreme proof of the conciliatory disposition of the delegation over which he presided, Ismet Pasha withdrew this proposal under the conditions just stated by him, and in reliance on the assurances of which he had already taken note." ⁶⁰ Lord Gurzon, the Chairman of the Commission, was certain that the Commission would have received with great satisfaction the intimation contained in Ismet Pasha's last sentence, that the Turkish delegation "renounced the project of requiring the departure of the Patriarch from Constantinople." ⁶¹

This renunciation by Turkey might not be binding on her under international law, if it is considered as the only basis for the Patriarchate's retention in Constantinople. But this renunciation is simply a fresh recognition of a previously existing situation according to which Turkey is obliged to retain the Patriarchate there under a series of international agreements with other Powers, under the general rules of International Law concerning the protection of minorities, and under her own national laws and Constitution. This obligation would have to be maintained with or without the above renunciation.



V

According to the Convention signed between Greece and Turkey on January 30, 1923,⁶² both countries agreed on the compulsory exchange of their respective minorities excepting the Greeks in Constantinople and the Turks in western Thrace. The Convention provided for the institution of a mixed commission.⁶³

While the Graeco-Turkish exchange of populations was in progress, the dispute regarding the interpretation of Article 2 of the Convention⁶⁴ had not yet been decided. Disagreement had especially arisen on the meaning of the word “established” (*établis* in the French text) as applied to Greeks in Constantinople. This disagreement extended to the status of the Patriarch in Constantinople.

On December 13, 1924, the Council of the League of Nations, at the request of the Mixed Commission, decided to ask the Permanent Court of International Justice to give an advisory opinion on the meaning of the word “established.”⁶⁵

The Court decided that, “The word ‘established,’ having been used to describe a portion of the Greek inhabitants of Constantinople, naturally embraces those inhabitants who, on October 30, 1918, were already residing at Constantinople with the intention of remaining there for an

extended period.”⁶⁶ The Court rejected the contention of the Turkish representative that to determine the meaning of the word *établis*⁶⁷ it was necessary to have resort to Turkish law.⁶⁸

The Turkish delegation insisted on reference to Turkish law since, in their opinion, any decision arrived at without reference to Turkish local law would be in complete derogation of Turkish sovereignty. But as the Permanent Court has pointed out in the Wimbledon case, “the right of entering into international engagements is an attribute of State sovereignty.” Moreover, it is evident in the present case that both the High Contracting Parties have assumed equal and reciprocal obligations. Hence it is futile to argue that a natural interpretation of the terms of the convention would infringe the sovereign rights of any of the Parties.⁶⁹

At these hearings before the Court, the Greek Government sought a decision of the Court exempting from exchange high ecclesiastical dignitaries of the Orthodox Church. Mr. Politis represented that, apart from any question of establishment at Constantinople, the prelates of the Orthodox Church were exempt from exchange, since by reason of their functions, they had to reside there to carry on the services of the Ecumenical Patriarchate under the conditions agreed upon at Lausanne on January 10, 1923, between Turkey and the Allied Powers.”⁷⁰

Dr. Teufik Rouchday Bey, the Turkish delegate, contended that the question of the Ecumenical Patriarchate, being a matter exclusively within the domestic jurisdiction of Turkey, had not been properly referred to the Court and could not, therefore, be dealt with by it.⁷¹ The Court declined to pass on the question, on the ground that it was not included among the questions placed before it by the League of Nations for advisory opinion. The Convention and the Treaty of Lausanne of July 24, 1923, are significant since they form the major basis for the international protection of minorities in Turkey.”⁷²

VI

The Treaty of Lausanne

The International Status of the Ecumenical Patriarchate is also guaranteed by the provisions of the Treaty of Lausanne of July 24, 1923, concerning the protection of minorities.⁷³

Under the Treaty, the Turkish Government guaranteed full and complete protection of life and liberty to all inhabitants of Turkey without distinction as to birth, nationality, language, race or religion. The inhabitants of Turkey were moreover given the full freedom to pursue, whether in public or private, any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals. Non-Moslem minorities could enjoy full freedom of movement and of emigration.⁷⁴ The Treaty assured the minorities, among other things, equality before law and the freedom to foster their own language.⁷⁵ As far as Turkish nationals belonging to non-Moslem minorities were concerned, they had equal rights to establish, manage, and

control at their own expense, charitable, religious and social institutions, schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.⁷⁶

Although the minorities had been deprived of nearly all their former privileges, in matters concerning family law or personal status, the Turkish government undertook to take measures permitting the settlement of those questions in accordance with the customs of those minorities. Turkey, furthermore, undertook to grant full protection to the churches, synagogues, cemeteries and other religious establishments, belonging to those minorities. She also granted all facilities and authorization to the religious and charitable institutions of those minorities, existing at that time in Turkey.⁷⁷ Finally Turkey, conceding that the stipulations with regard to the protection of minorities gave rise to international obligations, agreed to place them under the guarantee of the League of Nations. She also recognized the international character within the meaning of Article 14 of the Covenant of the League of Nations of any dispute that might arise between the concerned parties regarding the provisions of this treaty. Moreover, it was also agreed to that any such dispute on the request of the other party could be referred to the Permanent Court of International Justice, the decision of which shall be final, having the same force and effect as an award under Article 13 of the Covenant.⁷⁸

The provisions of the Treaty of Lausanne, concerning the minorities, constitute the Magna Charta of those minorities. Thus, while the rights of the Christian minorities were expressly guaranteed, a new Turkish state came into being with the widest consequences for European nations and for the Turkish people themselves.

Comparing the above rights of the minorities with those granted by the Ottoman Empire, we find the latter, at least in theory, greater than they have been elsewhere at any time. But those rights were accompanied by no security, and their existence did not prevent the brutalities which marked the history of Turkey in the last century.⁷⁹ While the Treaty of Sévres sought to guarantee these rights in their entirety, the Treaty of Lausanne provided for them the more limited privileges of the European Minorities Treaties, with the guarantee of the League as compensation. But this guarantee was ineffective until the time Turkey chose to enter the League of Nations.⁸⁰ But in the meantime, these minorities — Orthodox Christians, Jews, and Armenians — agreed to renounce their rights at the time of the introduction of the Turkish Civil Code.⁸¹ In return, the Government announced its intention of applying the new code to all citizens of the Turkish Republic without distinction as to race, nationality, or religion. But a treaty provision between Turkey and the Allies could not be abrogated by the action of individuals.⁸² The minorities had by their action agreed not to take advantage of their privileges. But this renunciation is not tantamount to the abrogation of the rights of the members of the League, the more so since Turkey had entered the League to raise the question of the status of its minorities. It appears, however, that in practice the new Civil Code of 1926 had in effect

provided for reasonable security.⁸³ The minorities remaining in Turkey ever since the exchange of populations are less to be regarded as national than as religious minorities. Their grievances were mainly regarding church matters.⁸⁴

Treaty of Lausanne

- 1923
- Amended the treaty of Sevres
- Expelled the Greeks
- Turkey recovered Eastern Thrace, the Aegean Islands, Smyrna, and a strip of land along the Syrian border
- No reparations
- No limitation on Turkish military establishments outside the Zone of the Straits



Protection of Minorities Under the League of Nations and United Nations

Before World War II, the protection of national and religious minorities was sought to be achieved through the framework of the League of Nations, which served as a guarantor for special commitments to respect minority rights. Under the League minority system, the principle was established that the minority problem was primarily the concern of the organized international community. Thus, that International Organization made great efforts to afford protection to minorities.⁸⁵ The Organization devoted special attention to a systematic international control over the minority policy of some of the Eastern and Central European countries, and in the particular case of Turkey and Greece.

But in spite of the sincere attempts of the League to protect the minorities, its mechanism proved to be ineffective. Those religious or national minorities whose protection was not secured by bilateral agreements were left to the mercy of the minority states. Even those that were secured by such bilateral agreement did not receive adequate protection from the League. Many scholars, investigating the subject, tried to find out the real cause of the League's failure in such an important subject. The causes may be more than one. Perhaps the League tried to push for a solution that was impossible for a question that was obviously premature. Perhaps it tried to impose a system which could not effectively work under those circumstances. Or perhaps it was not the fault of the League, but of some states which were unwilling to cooperate toward a workable solution. But the answer to that question is beyond the scope of the present study.

The framers of the Charter of the United Nations dealt with the minority rights in a different way than the League had approached the subject. It seems that the United Nations did not want to test its effectiveness on that crucial matter, and it has been its policy to refrain from exercising any kind of pressure for the protection of minorities. Nevertheless, the organization could not ignore such a great problem, directly connected with the peace and security of the world. Its policy tends to encourage bilateral agreements between the states concerned rather than a direct intervention of the international community. But the Charter did not fail to declare the principles which must govern minority rights under the general protection of human rights. It calls upon its members to achieve international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." 86

Two possible actions of the United Nations, among the others, constitute a significant contribution to the rights of minorities, namely, the approval of the Genocide Convention by the General Assembly, and its efforts to find out means for implementing the Covenants of Human Rights. Article 2 of the Convention defines the crime of Genocide in terms of "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such."⁸⁷ Later on the Sub-Commission on Human Rights adopted the following draft article: "Persons belonging to ethnic, religious, or linguistic minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." 88

It is true that the minority problems differ in form, character, and intensity in various parts of the world.⁸⁹ But the fact is universal that men of different races, religions, languages and national cultures and heritage are faced with the problem of living together in peace and brotherhood. Apart from any legal obligation, it is the great moral duty and responsibility of Greece and Turkey to encourage such amity between their majorities, and minorities, and especially to abstain from any action which might disturb the peace between them and drive

humanity towards misery and mutual annihilation. The past is full of terrible evils with bad experience in the future.⁹⁰

New Turkish Concepts for the Treatment of Religious Minorities in Turkey

On March 1, 1924, Mustafa Kemal, speaking before the National Assembly, said that the Moslem religion must be freed from its role as a political instrument which it had been compelled to play for centuries.⁹¹ This change was indeed an important development in Turkish history with great consequences in particular for the religious minorities living in Turkey, which it may be too early to define precisely. A few more decades may have to elapse before this new philosophy has taken firm roots in the everyday life of that country. The beginning, nevertheless, gives rise to hopes for the future.

The new governmental system of Turkey rests not merely upon the Constitution of 1924,⁹⁴ but also upon important documents which preceded it. First among these is the National Pact,⁹² the salient features of which are the abolition of the capitulations and other foreign privileges in Turkey, and the agreement expressed in it to accept a special international status for minorities remaining under Turkish rule after a peace treaty.⁹³

The amendment of the Constitution on January 10, 1945, repeats the principles of the Constitution of 1924 and is in conformity with the existing new civil code. Article 75 provides that, "No one may be censured for the philosophical creed, religion or doctrine to which he may adhere. All religious services not in contravention to public order and morals and laws are authorized." Furthermore, Article 88 clearly separates religion and nationality indicating that the same protection is extended to all Turkish nationals. It says: "The People of Turkey, regardless of religion and race, are Turks as regards citizenship."

Expulsion of the Ecumenical Patriarch

While the Permanent Court of International Justice was holding hearings on the question of the interpretation of Article 2 of the Convention of Lausanne,⁹⁵ the case of the exchangeability or nonexchangeability of the Ecumenical Patriarch Constantine was raised before the Mixed Commission.

The then Metropolitan of Derkon Constantine Arapoglou and two other candidates for the Patriarchate were informed by the Turkish police on December 16, 1924, that they had the status of exchangeable subjects under the Convention for Exchange of Populations. The local sub-commission of the Mixed Commission was requested to issue passports to them to enable them to leave Constantinople. The Turkish authorities took the position that Monseigneur

Constantine, who in the meantime was elected and became Ecumenical Patriarch of Constantinople, was born in Signi, Anatolia, was resident on October 30, 1918, at Cyzicus, on the Asiatic shore of Marmora, and did not come to reside in Constantinople until 1924. But the Greek member of the sub-commission pointed out that the question of birth was irrelevant since Monseigneur Constantine had actually been “established” in Constantinople since 1902 and that his residence in Cyzicus, if at all, could only be regarded as temporary. He also alleged that he was an official of the Patriarchate and as such “established” in its building at Constantinople.



His All-Holiness Constantine VI was the Patriarch of Constantinople from December 17, 1924, until January 30, 1925, for only 43 days, having been exiled by the Turkish government.

Similar objections could be raised against all except three of the Greek Metropolitans. Canonical law demanded that the Patriarch be elected by the Holy Synod of twelve

Metropolitans. If Turkey could expel all Metropolitans as exchangeable subjects, this would amount in fact, if not in theory, in the abolition of the Patriarchate.⁹⁶

The sub-commission, on December 16, declined to give a decision on this delicate case. It referred the matter to the Mixed Commission. Meanwhile it requested the Vali of Constantinople to set the Patriarch at liberty. The Commission, after many private discussions, adopted in January, 1925, a resolution⁹⁷ running as follows:

“The Mixed Commission, while noting the facts contained in the report of the sixth Sub-Commission, No. 2360, dated December 17, 1924, in regard to the question of the exchangeability of Monseigneur Constantine Arapoglou, former Metropolitan of Derkon, according to which Monseigneur Constantine, having been born in Asia Minor and having gone to Constantinople after October 30, 1918, fulfilled in his person all the conditions necessary for the purpose of exchange, holds that it is beyond its competence to take a decision in regard to the case of this prelate in view of his status as a Metropolitan.”

This resolution impliedly stated that the Mixed Commission or its agencies were to take no subsequent action.⁹⁸

In the early hours of January 30, 1925, two days after the Mixed Commission made the above decision, the Turkish police at Constantinople expelled the Patriarch Constantine in an abrupt fashion. As a consequence, the Greek member of the Mixed Commission resigned. The Archbishop of Athens and Greece telegraphed to the heads of all the religious communities in Europe and America requesting their intercession. There was considerable talk even of war, but with little foundation, although each party to the conflict accused the other of military preparations. An acrimonious exchange of notes began, accompanied by numerous communiqués issued by the Embassies and Legations of Greece and Turkey in foreign countries.⁹⁹

The Turkish case was that the Patriarch was an exchangeable person and therefore had to be exchanged under the terms of the convention. The expulsion merely constituted an enforcement of the decision of the Mixed Commission. Greece argued that the Commission had recognized the Patriarch — by reason of his office — as more than an individual citizen. On account of that they had refused to issue him a passport and the Turkish Government had undertaken not to expel the Patriarchate, the term Patriarchate necessarily implying the existence of a Patriarch. 100 Turkey’s answer that the simple way out of the dilemma was to elect a non-exchangeable Patriarch was rejected by Greece on the ground that this was, as Turkey very well knew, impossible, nearly all the Metropolitans being exchangeable. Monseigneur Constantine, moreover, had not abdicated, but had on the contrary appointed a *locum tenens* on leaving Constantinople. After Greece had announced her intention to appeal to the Permanent Court of

International Justice, the Turkish Ambassador in Paris let it be known that Turkey would not accept the jurisdiction of the court.¹⁰¹ The Turkish Prime Minister Fethi Bey, speaking in Ankara on February 5, declared that the question was a purely internal one and that the Greek protests or attempts at intervention must be regarded as unfriendly. ¹⁰² The Turkish answer to the Greek note, published two days later, reaffirmed that the question of exchange of populations must not be kept separate from that of treatment of minorities. Only on the latter Turkey could agree to an appeal to the Permanent Court.

The Greek Government, considering that this action constituted a serious infringement of the Lausanne agreement regarding the constitution of the Patriarchate and its activities, and likewise an infringement of Article 12 of the Convention concerning the exchange of Greek and Turkish populations, as well as of the decision of the Mixed Commission and of Turkey's undertaking to obey the decisions of that commission, brought the question before the Council of the League under Article 11, paragraph 2, of the Covenant.¹⁰³

The Turkish Foreign Minister thereupon declared that Turkey would not appear before the League. It was intimated not only that the eight remaining exchangeable Metropolitans might presently be expelled, but that the question of the Greek population in Constantinople might be broached again should the present dispute not be settled to Turkey's satisfaction.¹⁰⁴ The Turkish Government in a letter dated March 1st requested the Council not to consider the Greek Government's application. It denied having failed to respect the powers conferred upon the Mixed Commission by the Convention of Lausanne. Furthermore, it assented that it had not failed to conform to the declarations made at Lausanne by its representative, Ismet Pasha, when he withdrew his demand that the Ecumenical Patriarchate be removed from Constantinople. It also argued that the Patriarchate was a Turkish domestic institution,¹⁰⁵ its constitution and administration being subject to Turkish law and regulations, and there was no provision in any of the treaties on which a contrary view could be based. There was, moreover, no clause giving one or several foreign powers the right to intervene in the constitution and administration of this institution. The same letter accused the Greek Government of trying to take advantage of this opportunity and to endeavor to turn the Patriarchate into an international institution and so interfere in Turkish domestic affairs, although no international treaty or convention contained any provisions regarding that institution.¹⁰⁶

The Turkish Government thereby raised the question of the competence of the Council. The question was thus presented whether the Council should abstain from considering a topic which, according to one of the parties, was within the exclusive jurisdiction of that party. Another aspect of this question was whether the Council should decide that, in virtue of the provisions of the Lausanne Convention, it properly belongs to the exclusive jurisdiction of the Mixed Commission, which has not submitted any request to the League of Nations regarding this matter.¹⁰⁷

The question came before the League of Nations at the meeting of the Council, on March 14, 1925. The Turkish Government refused to send a representative for the reasons explained in the above memorandum. But Mr. Caclamanos, the Greek representative, argued before the Council¹⁰⁸ that the maintenance of the Patriarchate was by no means a Turkish domestic question. He reminded the Council that the question of the Patriarchate had not only given rise to long discussions at Lausanne, but that Turkey herself had placed the question of the Patriarchate on the agenda of the Lausanne Conference. He also argued that from the moment Turkey submitted the question of the Patriarchate to an International Conference, and Ismet Pasha made the statement that he withdrew his proposal for its removal,¹⁰⁹ and also from the moment the Greek delegation consented to undertake the regulation of the kind of activities which would constitute in the future the duties of the Patriarchate, "how could it be maintained that the question was not an international one? What other qualifications were necessary to define a question as international? What other attributes were required before any matter could be described as being of international interest?"¹¹⁰ Mr. Caclamanos further pointed out that Greece did not want to deny the fact that the Patriarchate was an institution of an internal character. The maintenance of the Patriarchate at Constantinople had, however, been subject of the provisions of international agreements. Any departure from what had been decreed was a matter of interest to Greece, one of the states signatory to the Treaty of Lausanne, and at the same time an Orthodox state. Greece would have no longer any reason to concern herself with the affairs of the Patriarchate once the principles laid down at Lausanne were confirmed.

In his comment on the Turkish government's letter to the Secretary-General, the Greek representative observed that it went further than to consider the Council incompetent in regard to the question of the Patriarchate. It rather submitted a detailed argument of its case, thus admitting that it considered that the substance of the question should be put before the Council and thus designating the question as an international one. As further evidence he adduced the fact that the Turkish government had come before the Council to discuss it, by means of an official letter setting forth its views. He also argued that the Mixed Commission by its decision of January 28, 1925, far from premitting the Turkish government to expel Monseigneur Constantine, had declared itself incompetent to deal with his case, thus indicating its desire to have the question submitted to another jurisdiction. The only proper jurisdiction in this case was the Council of the League of Nations, an organ qualified to supervise the execution of international treaties.¹¹¹ The representative of Greece finally raised a second point in the Turkish government's letter. It was true, he said, that none of the Lausanne Acts contained any specific clause signed by the plenipotentiaries of the powers present at the discussion of the question of the Ecumenical Patriarchate. He alleged that not only signed agreements and acts bearing the signatures of plenipotentiaries constituted international undertakings. It was laid down in one of the diplomatic documents of the Lausanne Conference, the official minutes of January 10, 1923, signed by the Turkish delegation. It had been stated that, that delegation, in order to give a final proof of its

conciliatory views, withdrew its proposal under the conditions which it had stated. Ismet Pasha, by the word “solemn,” had even qualified the statements made regarding the conditions which he had accepted. When Ismet Pasha, in reply to the statements of other delegations, had withdrawn his proposal to expel the Patriarchate, Mr. Caclamanos asked, “Could it be alleged that he had not thereby entered into some kind of mutual agreement with the other delegations?”¹¹²

The Council, by a resolution of March 14, and after a report by Viscount Idhii,¹¹³ decided to request the Permanent Court of International Justice to give an advisory opinion on the following question:

“Do the objections to the competence of the Council raised by the Turkish Government in its letter of March 1st, which is communicated to the Court, preclude the Council from being competent in the matter brought before it by the Greek Government by its telegram to the Secretary-General of the League of Nations dated February 11, 1925?”¹¹⁴

The Council further expressed the hope that it would be possible for the question at issue to be settled by private negotiation, perhaps with the good offices of the Neutral Members of the Mixed Commission.

Meanwhile the Ecumenical Patriarch Constantine had sent, from his exile in Salonica, a letter and memorandum to the Council of the League of Nations expressing the canonical aspect of the question.¹¹⁵

Finally, the desire of a satisfactory settlement between Greece and Turkey was realized, and the Court was informed that it was no longer necessary for the Council to ask the Court to give the opinion contemplated by the previous resolution.¹¹⁶

The following years clearly showed that the Patriarchate discharged successfully its new role as a purely spiritual and religious institution. It is noteworthy that the Turkish and Greek governments recognized the new role of the Patriarchate with good understanding. ¹¹⁷

Patriarchate and Papacy

The international status of the Ecumenical Patriarchate may partially be compared with the status of the Holy See before the Treaty of Lateran, 1929.¹¹⁸ The Law of Guarantees,¹¹⁹ passed by the Italian Parliament on May 13, 1871, had declared the end of pontifical sovereignty over any territory whatsoever, even going so far as to declare the very places of the Vatican as property of the State, with only their use being granted to the Pontiff as a concession. On the other hand, under the Treaty of Lausanne, the Ecumenical Patriarchate was deprived of all its privileges of administrative and judicial power. Especially the Phanar area ceased to be used as a

territory, in which the Patriarchate could move in absolute freedom for fulfillment of its additional political powers.

Some of the guarantees of the Holy See provided for in the law of 1871, e.g., the inviolability of the Supreme Pontiff;¹²⁰ freedom of discussion on religious matters; the inviolability of the Apostolic¹²¹ Palaces and of the Pontifical Congregations;¹²² the non-interference by the government with the seminaries and other pontifical institutes of study, and the relations between Church and State as regards the nominations of Bishops, and the administration of ecclesiastical properties, etc., are similarly safeguarded for the Patriarchate in analogous circumstances, by national Turkish laws, by the constitution in its provisions on freedom of religion, and by international agreements. In substance, the Law of Guarantees proclaimed the abolition of the Temporal Power of the Popes, their authority being theoretically restricted to only religious matters, in the same way as the Treaty of Lausanne restricted the authority of the Patriarchate to religious matters. The elimination of their authority in political matters¹²³ has in no way diminished. Their stature as spiritual leaders, even beyond their own religious communities, has been possibly even enhanced in comparison with the past.

VII

The position of the Ecumenical Patriarchate in Istanbul¹²⁴ makes that ancient city the meeting point of two entirely different religions, Christianity and Islam. Their harmonious co-existence in the past centuries is the best guarantee for their simultaneous progress in the future. It is true that the civilization of the nineteenth and twentieth centuries enabled the brotherhood of all religions. The ancient dogmas of Muhammedanism are no more immutable than those of other creeds. Enlightened Moslems have done their best to bring their religion into conformity with modern ideas and the progress of an enfranchised people.

But the rights of minorities may not be subject to the unrestrained judgment and action of any one nation. Sovereignty does not confer on the territorial legislature full power over minorities. Their rights may be determined only by the deliberate united agreement of all nations, in accordance with the most liberal conceptions of the law of nations. International, not National, jurisprudence is determinative in this field. But minorities' rights cannot be separated from other factors such as human rights, conditions prevailing in the states comprising minorities and generally in the whole world.¹²⁵

While the Ecumenical Patriarchate derives additional rights from minority and human rights principles, it nevertheless stands perfectly alone as a religious institution, to which international treaties, national laws of Turkey, and world respect give inalienable rights and privileges.¹²⁶

Therefore, it is suggested that the Ecumenical Patriarchate must remain in Istanbul in the interest of Christianity and of all parties concerned. There are many factors, psychological, ethnological, religious, international, which advocate such a solution. Erosive time and the spreading of civilization in this world change many things, even traditions of centuries in countries where they had deep roots in people's lives. But some religious principles and traditions remain forever or, at any rate, as long as religion influences the life of man. The existence of the Patriarchate of Constantinople has become one of the strongest traditions of Orthodoxy.¹²⁷ What would be the reactions of the millions of Catholics in the world if the removal from Rome of the Holy See would be attempted? The case is quite similar to the Ecumenical Patriarchate. But if the rest of the Orthodox nations think about the Ecumenical Patriarchate with great respect and pride, for Greece and the Greeks it represents what they cherish and hold sacred above all things since the foundation of the Greek nation. While Athens and other ancient Greek cities and monuments are reminders of the past glory of Pericles, Socrates, Phidias and Sophocles, Constantinople represents not a monument but a living institution which continues to inspire Greeks to a Christian life and guide them to the duty of love for all nations without discrimination of race, religion, or nationality.

Let us assume for a moment that the Ecumenical Patriarchate would be removed from Istanbul to another place in Greek or other territory. What would the consequences be? Of course, it would never renounce the title of Patriarchate of Constantinople.¹²⁸ But a great attempt by Greece, or by some other Orthodox or even Christian states, may start for the recapture of the vacated throne. Peace under those conditions may never come to the Balkan states, and religion and politics may be mixed for mysterious purposes and with undesirable consequences. From such a storm Greece and Turkey primarily would suffer, because of the pressure of the factors, instability of their position in the international field, and delay of their progress.¹²⁹ Experience of the past does not give us any doubts that history might be repeated.

We believe, therefore, that the status of the Ecumenical Patriarchate must be secured in such a way as to enable it to fulfill its historical mission. Its existence is absolutely necessary to the Orthodox churches all over the world and in the great interest of all Christianity, especially since all doctrines and religions must cooperate to further world peace. Furthermore, its preservation in Istanbul is equally necessary as directly connected with its existence.

It would be in the interest of all the parties and people concerned, if the position of the Ecumenical Patriarchate could be insured by an international agreement, with the participation of the permanent members of the Security Council, on which falls the main responsibility for maintenance of international peace and security, as well as Greece and Turkey. The latter could cede to it a small area or zone in the Phanar,¹³⁰ or otherwise take any other proper measures to enable it to fulfill, freely and independently of the state, all its duties arising from the Canon Law and the nature of its mission. But it is not suggested that the Patriarchate must regain its political

powers. Its task is to carry out duties as a purely religious institution, in accordance with the ideas of Orthodox doctrine and the contemporary concepts of separation of Church and State.

Religion in a civilized world pacifies man's mind and encourages people to live in peace and brotherhood. Therefore, it is constructive for world peace and a reminder to men that war is not in conformity with human integrity and the purpose of life. For that reason, high religious institutions greatly contribute to the cause of peace and must be protected and respected by states.

HARVARD LAW SCHOOL

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NOTES

1 During the Ottoman rule the Patriarch was the *ex officio* representative of the Greek nation to the Ottoman Government with which he was communicating either in person or by his Ministers for Foreign Affairs (styled "Great Logothete"), and by his Vice-Chancellor.

2 Those of the Orthodox denomination are a group of quite independent Churches, each under its own Patriarch, the four ancient Patriarchates and the more modern Patriarchates of Russia, Yugoslavia, Bulgaria, and so forth, while those of Roman Catholic denomination find their supreme head in the Papacy. In this structure, the Orthodox Church is like the Anglican Church which also consists of a group of independent Churches, namely, the Irish, Scottish, Welsh, American, and South African, under the primacy of the Archbishop of Canterbury.

3 There are about 150,000,000 Orthodox Christians in the world.

4 Today the Ecumenical Patriarchate has four Métropoles [Chalcedon, Derkon, Principonisos, Imbrus] in Turkey; four Métropoles in Dodecanesos; one in America [North and South]; one in Australia; two in Europe [the one being Russian]; one in Prague, Czechoslovakia; two autonomous Archdioceses in Estonia and Finland; and an autonomous one in Crete.

5 It is called "Patriarchate of Constantinople," "Great Church of Christ," and "Church of Constantinople" [Église de Constantinople, ou Église de Phanar ou Église phanariote]. The Turks call it "Rum. Patrikhanesi," or "Istanbul Patrikhanesi."

6 "Phanar" is called the Greek quarter of the city.

7 "It is none of my business whom you choose for your Patriarch. Elect anyone who suits you and consecrate him according to your ancient usages. But this vacancy is intolerable and I do not countenance it. Get down to work at once. Your man will have my backing but delay and I shall have your heads." Crabitès, *The Courts of Egypt*, 11 A.B.AJ. 485 (1925).

8 See H. S. Williams, *24 Historians History of the World* 329 (1907), Bertram, *The Orthodox Privileges in Turkey*, 10 N.S. J.S.CL. 127 (1909), also Eversley & Chirol, *The Turkish Empire* 88 (1924).

9 In the Turkish official language the word privilege was expressed in the term "Imtiyazat-ı mezhebiye" (religious privileges). But from the beginning of the 20th century they replaced the above term with the word "Mukarrerat" or "Musaadat" (decisions, permissions). The word "Imtiyaz" means distinction, advantage, privilege, while the word "mukarrerat" means opinion and decision taken temporarily on a subject matter; therefore it connotes something the temporary and revokable. Similarly the word "musaadat," used also in the official Turkish language, means permission, condescension. Nicholas Elefthenades, *The Privileges of the Ecumenical Patriarchate* 224 (in Greek, 1909).

10 Bertram, *op. cit. supra*.

11 The word "mil'let" (nation) was later replaced by "djema'at" (community). See Brown, *Poreigners in Turkey* 18 (1914).

12 Young, *2 Corps de droit ottoman* 2 (1905).

13 Thereafter, at every installation of the Patriarchs, the Sultan used to give them a Berat, which was the exequatur (exequatur ou diplôme d'investiture) of every Patriarch or Metropolitan. They were similar to the Berat given to the Consuls-General of the Great Powers in Turkey. The difference between the two Berats is that while the latter was based on international agreement (capitulation) the former was based on the Ottoman law, mainly the Sacred law. Thus it can hardly be said that the Berats given to the Patriarchs were evidence of international responsibility of Turkey to grant the privileges of the Patriarchate, as was sought to be argued by some jurists, especially Greeks.

14 The Prophet Muhammed seemed to consider all mankind as divided into two opposing camps, namely, the "House of Islam" (Dar-ul-islam), and the "House of War," that of all unbelievers (Dar ul Harp). He furthermore provided that all conquered non-Moslems might live in peace under Moslem jurisdiction by paying tribute (haradj). The Islamic teachings therefore, from the beginning, recognized the existence and independence of Christianity in a Moslem country and the freedom of the Christians to practice their religion, without the necessity to have recourse to the Islamic law when it is contrary to their religious understanding. Eleftheriades, *op. cit. supra*, note 9, at 14-15. The Ottoman authorities were not competent to administer such laws, and the nonMoslems had the right to appeal to their religious heads, the MH'let Bashi (Head of the Nation — title also conferred to the Patriarch), who thus became, in a sense, political authority. While this had created some embarrassments to the Turkish authority, they were at the same time relieved of the more embarrassing obligation of assuming jurisdiction in matters foreign to Moslem law and usage.

The solution to the problem reached by Sultan Muhammed, by granting immunities from jurisdiction to his non-Moslem subjects, may therefore be considered on the whole as wise and satisfactory.

The Sheriat, or sacred law of Islam, guarantees the right of the non-Moslem in Moslem lands to practice their religion, not only in their ritual aspects but also to matters like marriage, inheritance laws, education, religious endowments, etc. It further enjoins that non-Moslems must be subject to their own authorities in these matters. These rights were from ancient times exercised by the Ecumenical Patriarchs of Constantinople, as well as by the Patriarchs at Jerusalem and Alexandria, on behalf of the Orthodox communicants in the Ottoman Empire, down to March 2, 1919. Not only the Greek but also the Armenian Patriarchate and the Grand Rabbinate of Turkey enjoyed from the beginning similar privileges.

15 *Id.* at 6-7. When Muhammed occupied Constantinople, he found existent all over the Byzantine Empire a system of immunity for the foreigners. Every nation under that Empire had the right to have its own jurisprudence, laws and judiciary. Thus the Venetian had the Bali, the Genuish the Podestà, the Ragusian the Console, and the Moslem the Cadi. The Conqueror preserved the same system and applied it to the Byzantines. Therefore, it was argued, one of the main reasons for the privileges of the Church was the existing international law at the time of the conquest. But it may be pointed out that since through the privileges of the Church only the relations between the subjects of the same state, namely the Ottoman Empire, were regulated, the rules of international law, if at all thought of, could not possibly have been applied in this matter. See an analysis of the subject in Eleftheriades, *op. cit. supra* at 33-47.

16 It is significant that the sentiments of Christian Europe were not a whit roused when the Patriarchs were subject to untold sufferings at the hands of the Turks. Records reveal that even when the Patriarchs were hanged, there were no protests from Christian Europe.

17 Before the resurrection of independent Balkan states in the nineteenth century, the Turkish Government was accustomed to classify its Christian subjects by their common religion rather than by their distinctive races. The Ecumenical Patriarchate at Constantinople had ecclesiastical jurisdiction not only over all the Greeks (except those of Cyprus, whose Archbishop has been head of an autocephalous Church since the Council of Ephesus in A.D. 431, and enjoys the privilege of signing his name in red ink), but also over the Serbs, Bulgarians, Roumanians and Albanians.

18 Ever since 1453 the Patriarch had been an official of the Sultan's Government. In later days, since the introduction of constitutional government at Constantinople, the heads of the non-Moslem communities in the Ottoman Empire, of which the Ecumenical Patriarch was the most important, had been officials of the Ministry of Justice in the Sultan's Cabinet. This historic relationship, however, was broken off by the Patriarchate on March 9, 1919, in a note which drew a protest from the Ottoman Government.

19 2 Survey of International Affairs 267 (1925).

20 See also p. 22 *infra*.

21 "No proof of disloyalty on the part of the Patriarch could be derived from the events which occurred during the last war. . . . One must bear in mind the great turmoil in men's consciences to which a cataclysm such as the war had given rise, and it would be both unjust and dangerous to judge the future on the basis of the past." E. Veniselos, Lausanne Conference, 1 Turkey, CMD, No. 1814 at 322 (1923). The future shows that the Patriarchate has ever since abstained from any political activity. Now it seems certain that since its powers are confined to only religious matters, it will continue as a strictly religious institution. But during the critical years after the first world war, the Patriarchate found itself enmeshed in the antagonism between the Great Powers and between Greece and Turkey.

Meletios IV, the then Patriarch, who was involving himself in political propaganda, was soon the object of a demonstration by a riotous mob, which forced its way into the Phanar. Meletios withdrew from Constantinople on July 10, 1923, proceeding to Salónica and a suggestion was put forward at the time, that the Patriarchate might be transferred to that city. Such an idea, however, did not commend itself either to Greeks or to other Orthodox Churches. An acrimonious controversy was closed by the abdication of Meletios, which was communicated to

the Holy Synod on November 10, 1923, the prelate himself retiring to a monastery on Mount Athos.

The election of his successor Gregorios VII, who was enthroned on December 13, 1923, was a turbulent one. Papa Eftim, who was nominally head of the so-called Turkish Orthodox Church of Anatolia [a small community which maintained that the Greeks of Asia Minor were in fact only Christianized Turks], led a violent opposition to the new Patriarch. Papa Eftim immediately after the election forcibly occupied the Phanar, drove out five Archbishops of the Holy Synod, and called upon the elected Patriarch Gregory to resign the Throne. Finally the Turkish Government intervened and forced Eftim to leave the building, because, in fact, he was merely an adventurer, whose exploits were undertaken with an eye to his own advantage. See *The Manchester Guardian*, December 10, 1923, p. 9 col. 3.

22 Mustafa Kemal stated to a newspaper correspondent that "now that the Caliphate had been suppressed, it would be necessary also to suppress the Ecumenical Patriarchate, the Armenian Patriarchate and the Grand Rabbinate. Public opinion could not tolerate this continued existence under a Republican Government of such institutions which have acquired temporal privileges entirely foreign to their religious character." *The Times* (London), May 6, 1924, p. 13 col. 3.

23 2 Survey, op. cit. supra at 269. In 472 years, 105 Patriarchs had been deposed by the Porte, twenty-seven forced to abdicate, and others imprisoned, beheaded, strangled, or hanged. Only about ten had died natural deaths in the Phanar. Id. at note 2.

24 The Turkish theory was that a treaty could be in force only during the life of the Sultan who signed it, as a kind of *modus vivendi* or temporary truce with unbelievers (soulh).

25 Hertslet, 3 *The Map of Europe by Treaty* 2011 (1875).

26 "De là," as M. Sorel says, "pour la Russie l'obligation de s'immiscer dans les affaires intérieures de la Turquie, chaque fois que les intérêts des chrétiens l'exige." Sorel, *La Question d'Orient au XVIIIe Siècle* 262 (1889).

Obviously Article 7 deals with the Christians of the Orthodox rite, because Christians of the Catholic rite were already under the protection of France and Austria, by the Capitulations that the Sultan had granted them, or by the treaties concluded between the Sublime Porte and those Powers. Protestants were also under the effective protectorate of the Protestant Powers (England, Prussia, United Netherlands). It was in that sense that Russia construed the stipulation of Article 7. See C. L. Papadopoulos, "Les Privilèges du Patriarchat Oecuménique." *Thèse pour le Doctorat* 141 (1924).

27 This right of Russia to be considered as protector of the Orthodox Church, was also recognized in the treaties of Ainali-Konak of 1779; Jassy of 1792; Bucharest of 1812; Adrianople of 1829.

28 Beginning with the treaty of Kutschuk Kainardji, Turkey had made numerous treaties with European powers in which she agreed to respect the rights of Christian minorities and to allow a certain amount of supervision by the powers to secure this end, but she has blithely violated every one of the treaties, generally when the jealousies of the powers were strong enough to prevent joint or individual action for the protection of these minorities. Thomas, *One Hundred Years of the Monroe Doctrine* 490 (1923).

29 For the text of the law see Hertzslet, *The Map of Europe by Treaty 1243- 49* (1875) ; also Von Pischon, *Die Verfassung der griechisch-orthodoxen Kirche in der Türkei, Ein Beitrag zu der neuen Kirchengeschichte des Orients: in Studien und Kritiken* pars. 272-273 (1864).

30 This law established for the first time the system of the mixed civil (not religious) courts, consisting of Christians and Moslems, in which, contrary to the practice until that time, Christians were allowed as witnesses. They were sworn in accordance with their religion.

31 Eleftheriades, *op. cit. supra* note 9, at 211.

32 Bertram, *op. cit. supra* at 137.

33 At one time the Patriarch had undoubtedly a certain limited criminal jurisdiction, not only over his clergy, but even over lay members of his communion. What was the extent of this jurisdiction and how it originated is not easy to say. With the law of 1862 it finally disappeared. While it survived, the Patriarch executed his own judgments and maintained his own prison.

34 After the adoption of the second Constitution of Turkey in 1909, some of the so-called Young Turks upheld the assimilation of the minorities within Turkey. The confusion and persecution of Christians which followed led to the Balkan war.

35 The protocol of London of January 7, 1871, signed by the representatives of Germany, Austria-Hungary, Great Britain, Italy, Russia, and Turkey, contained the following provision: "It is an essential principle of international law that no power can absolve itself from the obligations of a treaty, nor modify its stipulations, except in pursuance of the assent of the contracting parties by virtue of an amicable agreement." Ravndal, *The Origin of the Capitulations and of the Consular Institution* 49 (1921). The protocol is significant in view of the provision of the Koran which permits a true believer to release himself from contracts with a non-Moslem even without notice. In another protocol signed at London in March 31, 1877, the Great Powers informed

Turkey that "if the condition of the Christian subjects of the Sultan should not be improved . . . they think it right to declare that such a state of affairs would be incompatible with their interests and those of Europe in general. In such cases they reserve to themselves to consider in common as to the means which they may deem best fitted to secure the well-being of the Christian populations, and the interests of the general peace." The Duke of Argyll, 1 *The Eastern Question* 398 (1879). We can clearly see in the wording of the above provision the kind of responsibility that the Great Powers undertook, and which is quite similar to the broad responsibilities of the League of Nations and the United Nations, where the protection of religious minorities falls into the framework of the system devised for the maintenance of the peace and security of the world.

In the Treaty of Berlin of July 13, 1878, Turkey gave new and fresh assurances for the protection of non-Moslem religion in her territory. Art. 62 of the treaty provides that " The Sublime Porte having expressed the intention to maintain the principle of religious liberty (See Hatt-i Humayum, p. 19 et seq. supra) and give it the widest scope, the contracting parties take note of this spontaneous declaration. . . . The freedom and outward exercise of all forms of worship are assured to all, and no hindrance shall be offered either to the hierarchical organization of the various communions or to their relations with their spiritual chiefs." Hertzslet, 4 *The Map of Europe by Treaty* 2796-7 (1891). Finally, Turkey undertakes in the same treaty to maintain all the provisions of the Treaty of Paris of 1856 and the Treaty of London of 1871, if they are not abrogated by the stipulations of the present treaty (Art. 63). *Id.* at 2798.

36 For the text see 15 A.T.I.L. 179-295 (suppl. 1921).

37 The provisions of the treaty were drawn up by the Allies and signed by the Turkish representatives, but never ratified by the Parliament. The treaty provides for religious freedom, but this provision had not the saving clause regarding "public order and public morals." The penalties for any interference with religious freedom were to be "The same whatever may be the creed concerned" (Art. 141). The prerogatives and immunities granted by the Sultans to racial minorities were to be respected, and any abrogations by the new government were to be null and void. (Art. 149).

38 The Sub-Committee met on December 2, 1922, under the presidency of Mr. Montagna of Italy. See *Lausanne Conference*, 1 *Turkey*, CMD, No. 1814 at 328-337 (1923).

39 *Id.* at 333.

40 *Ibid.*

41 *Ibid.*

42 Meeting of December 16, 1922.

43 CMD at 333 op. cit. supra.

44 Monastery in Greece.

45 CMD at 336 op. cit. supra.

46 Id. at 333.

47 Whether the seat of the Patriarchate was at Constantinople or not, the same delegate pointed out, to the Orthodox world the Patriarch would always be considered as the Archbishop of Constantinople. He also, till the proclamation of the Constitution (it was adopted on April 20, 1924), was the head of the Greek nation in Turkey, and, his powers having been confirmed by the Berats given by the Turkish Government, he held the rank of vizier in the hierarchy of the officials of the State. He finally must be of Turkish nationality. It may be pointed out that the last-mentioned requirement exists even today.

48 CMD at 334 op. cit. supra.

49 Id. at 333.

50 The British delegation read the following declaration at the meeting of December 3, 1922: "... I have received his Lordship's formal instructions to declare once more that he could not agree to any proposal aiming at the removal of the Ecumenical Patriarchate from Constantinople. ... It would be unjust to prejudice in any way the rights and the purely spiritual jurisdiction which belong to the Ecumenical Patriarch as primate of the Orthodox Churches and as head of the Orthodox Church in Turkey." Id. at 335.

51 Lord Gurzon was in the chair. Speaking to the Commission he said: "... We had a very strong pronouncement from the chief American delegate, showing far away in the United States great importance is attached to this question. Since I have been here I have been overwhelmed every day with letters and telegrams from all sorts of people all over the world, but none of them are more frequent or more full of profound feeling and conviction than those which I receive about the Patriarchate." Id. at 319.

52 The heads of the French, Roumanian, Yugoslavian, and Greek delegations profoundly agreed with his proposal. Id. at 319-328.

53 Id. at 319.

54 Id. at 320.

55 Id. at 321.

56 There were occasions when the Patriarchate stood with the Ottoman Empire against Russia and other Powers. This fact is indicated by many diplomatic documents and correspondences. Mr. Stramankoff, at the head of the Foreign Office of St. Petersburg, in a letter to Navikow, Russian Ambassador at Vienna, dated December 20, 1872, said: "You have no doubt learnt the last decision as to the sequestration of the property belonging to the Church of Jerusalem: although rather late in the day, this measure will be none the less a good lesson to our religious opponents. The Greeks, let us hope, will understand the utter madness of their attacks upon Russia and the Bulgarians, particularly when they see the throne of the Ecumenical Patriarch, in whom they take so much pride, dependent upon the good will of a man like Khalil, who incites them against us in order the better to indulge his own animosity." Lord Montagu, *Foreign Policy: England and the Eastern Question* 143 (1877). General Ignatieu, Russian Ambassador at Constantinople, writing to the Russian Ambassador at Vienna emphasized: "... It is certainly true that the fanatics of the Patriarchate make the task that he has undertaken very easy. ... I have written lately to our Consuls to withdraw all subsidies and assistance to Greek churches and schools. Perhaps by this means their eyes will be opened." Id. at 151.

57 E.g. Those provisions in the law of vilayets which made the Patriarch a member ex officio of certain councils; or those in the electoral law which conferred on him the right to supervise the drawing up of electoral lists.

58 CMD at 324 op. cit. supra.

59 He is identical with Ismet Inönü, the later President of the Turkish Republic.

60 CMD at 327 op. cit. supra. The way to this concession was paved by the return of Hassan Bey, a prominent member of the Turkish delegation, who had been sent back to Ankara for definite instructions, bearing authority to make concessions on this and other points.

"This concession is probably part of the price paid for yesterday's surrender of the Allies in the minorities controversy. . . . Americans may feel satisfaction because the Greek Patriarch remains in Constantinople." *N. Y. Times*, January 11, 1923, p. 1, col. 3.

Therefore the storm of protest from all over the world for the desired removal of the Ecumenical Patriarchate which, it was contended, would be like the expulsion of the Pope from Rome, gave the conference initiative to force the Turks to yield on that point. Lane, "Why Greeks and Turks Oppose Being Exchanged," 18 *Current History* 89 (April-September 1923).

61 CMD at 327 op. cit. Supra.

62 16 Treaty Series, CMD No. 1929, at 175-187 (1923). For a study of the transfer of minority populations see Ladas, *The Exchange of Minorities — Bulgaria, Greece and Turkey* (1932).

63 Article 11 provides that the mixed commission will be composed of four members representing each of the High Contracting Parties and three members chosen by the Council of the League of Nations from among nationals of powers which did not take part in the war of 1914—1918. It has full power to take the measures necessitated by the execution of the Convention and to decide all questions to which this Convention may give rise.

The provision regarding the exchange of populations gave rise to bitter diplomatic controversy between France and Turkey. Turkey expelled nationals of the French mandate of Syria on the ground that they belonged to the Greek Orthodox Church. But the French Government contended that Syrians were to be considered as French Nationals. See Sousa, *The Capitulatory Régime of Turkey*, 244-5 (1933) at note 31.

64 This article provides: ‘Ne seront pas compris dans l’échange prévu a l’Article 1** : (a) les habitants grecs de Constantinople . . . Seront cosidérés comme habitants grecs de Constantinople tous les Grecs déjà établis avant le 30 otcobre 1918 dans les circonscriptions de la Prefecture de la Ville de Constantinople, telles qu’elles sont délimitées par la loi de 1912.’

65 The question was _ in the following terms: “What meaning and scope should be attributed to the word ‘established’ in Article 2 of the Convention of Lausanne of January 30, 1923, regarding the exchange of Greek and Turkish populations, in regard to which discussions have arisen and arguments have been put forward which are contained in the documents communicated by the Mixed Commission? And what conditions must the persons who are described in Article 2 of the Convention of Lausanne under the name of ‘Greek inhabitants of Constantinople’ fulfill in order that they may be considered as ‘established’ under the terms of the Convention and exempt from compulsory exchange?” P.C.L.J., Ser. C, No. 7-1 at 54-5 (1925).

66 P.C.I.J., Ser. B, No. 10 at 19 (advisory opinion 1925).

67 The word ‘etablissemnet” embraced two essential factors: residence and stability—the intention to continue residence in a particular place for an extended period.

68 P.C.I.J. at 22 op. cit. supra.

69 Id. at 21.

70 Id. at 15. Id. at 16.

71 The Council, had it wished to obtain the Court's opinion on this point which was the subject of discussion at Lausanne, would have presented the matter before the Court in express terms. Under these circumstances, the Court thought it proper to decline jurisdiction on this question. Id. at 17. Furthermore, a State cannot directly ask for an advisory opinion nor can two States which are parties to a dispute make the request, or modify in any way a request made by the Council or the Assembly. See case on interpretation of the Caphan--daris--Koloff Agreement, P.C.I.J., Ser. A/B, No. 45 (1932).

72 Article 16 of the Convention is most important. It provides: ". . . No obstacle shall be placed in the way of the inhabitants of the districts excepted from exchange under Article 2 exercising freely their right to remain in or to enjoy to the full their liberties and rights of property in Turkey and in Greece. This provision shall not be invoked as a motive for preventing the free alienation of property belonging to inhabitants of the said regions which are excepted from the exchange."

73 Articles 37-45. For the text of the Treaty see 16 Treaty Series, CMD No. 1929 (1923); also League of Nations Treaty Series, No. 701 (1924); also 18 Am. J. Int'l L., 1-116 (suppl. 1924).

74 Art. 38. Thus the promise contained in the National Pact was redeemed. See p. 43 *infra*.

75 Art. 39.

76 Art. 40.

77 Art. 42. A special clause guarantees the non-Moslem minorities against disabilities resulting from the observance of their weekly day of rest. (Article 43).

78 Article 44. Greece, on the other hand, undertook to confer to the Moslem minorities in her territory the same rights conferred by Turkey to the nonMoslem minorities. (Article 45).

79 Mair, *The Protection of Minorities*, 216 (1928).

80 Turkey had been admitted to the League in 1932.

81 February 1, 1926.

82 The question of minorities, especially from the nineteenth century, had come to be regarded as of an international character. Since that time important international treaties dealing with the

subject had been conducted. In the Balkan area the necessity of protection of minorities was all the more felt ever since the massacres that came in the wake of the various wars of liberation. It was beginning to be felt in the nineteenth century that man should have freedom not only in the exercise of religion but also in the pursuit of material wellbeing. But it would seem that the Powers had in mind nothing more than assurance of some measure of religious toleration—an assurance that Turks and Christians should not exterminate one another with undue thoroughness. Macartney, *National States and National Minorities*, 164 (1934).

83 Mair at 216-7, *op. cit.*, *supra*.

84 The Greeks, Jews, and Armenians in Istanbul have at several times solemnly protested to the Turkish Government against being treated as national minorities. On the other hand, the League of Nations had received a great number of Greek and Armenian petitions containing complaints of violations of the obligations assumed by Turkey for the protection of minorities.

85 Walters, 1 *A History of the League of Nations*, 175 (1952), 2 Walters *Id.* at 813.

86 Article 1, paragraph 3. See also, Preamble of the Charter and Articles 13, 55, and 76. On several occasions, organs of the United Nations called upon the members to observe the human rights and to abstain from any religious or racial discrimination. The General Assembly in its First Session, on November 19, 1946, adopted a resolution calling upon governments “to put an immediate end to religious and so-called racial persecution and discrimination.” U.N. General Assembly Off. Rec., 1st Sess., Plenary, 48 (1946). When the Assembly adopted the Universal Declaration of Human Rights, it formally expressed the view that, ““The United Nations cannot remain indifferent to the fate of 'minorities,'” and furthermore called for studies to enable the organization “to take effective measures for the protection of racial, national, religious or linguistic minorities.” G. A. Res. 217 (III), 10th December 1948, Doc. A/1777. The above appeal of the United Nations to the individual states can also be applied to the Greek minorities in Istanbul of which the Ecumenical Patriarch is the religious leader as Archbishop of Constantinople. But it equally applies to the Turkish minorities in Greek territory.

87 G.A. Res. 260 (III), December 9, 1948, Doc. A/760.

88 U.N. Doc. E/CN. 4/sub. 21SR.57 (1950).

89 In spite of the insistence by states of the bilateral nature of the dispute, and despite the tendency of disinterested states to prevent such disputes from being added to the burden of international responsibility carried by members of the United Nations, the matter is not one merely of domestic concern but is of general international interest. Claude, *National Minorities: An International Problem*, 212-3 (1955).

90 The récent grievous occurrence of September 6, 1955, in Istanbul where rioters destroyed nearly all the Greek Orthodox churches in that city, plus property of the Greek, American and Jewish minorities valued at millions of dollars, is a black spot in the history of our civilization.

91 Bowman, *The New World*, 504 (1928).

92 For the text see 17 *Current History*, 280-1 (Oct. 1922—March 1923).

93 By the National Pact Turkey showed her willingness to guarantee the rights of minorities “as defined in the treaties concluded between the Entente Powers and their enemies and certain of their associates,” provided Moslem minorities in neighboring countries should be granted similar guarantees (Article 5). The new Constitution of 1924 gives adequate safeguards for equality before the law and full protection of life, liberty and property; equal civil and political rights; permission to establish, maintain and control religious and philanthropic institutions; freedom of social customs, including family law and personal status. For the text see 40 *Political Science Quarterly*, 89-100 (1925). Aside from their incorporation in the constitution, the pledges to minorities must be considered part of the fundamental law of Turkey not only in view of Article 44 of the Treaty of Lausanne, but also under the new syStem of law. (Turkey replaced the old civil code, “Medjelle,” of 1869 which was based on the Muhammedan Konanic law, with the new civil code of 1926 based on the Swiss civil code.) But the crux of the minority problem is not to establish rights on paper, but to assure that they are operative—in other words, to establish guarantees. For a better solution of the problem, the distinction existing between religious and national minorities is —— to be considered. This is important in the Balkan area and especially in Turkey, because there the religious rather than the national minorities played an important role up to 1923.

94 For the text see Thomas & Frye, *The United States and Turkey and Iran*, 156-166 (1951).

95 See pp. 39-41 *supra*.

96 *Survey of International Affairs*, 269 (1925).

97 This resolution was signed by the neutral and Turkish members of the Commission and not by the Greek members.

98 Ladas, *op. cit. supra* at 414.

99 See *The Times* (London), February 2, p. 12 col. 5, 3 p. 12 col. 3, 4 p. 13 col 3 (1925). The new Serbian Minister of Athens, M. Gabrilovitch, gave an interview to the Greek Press on the

crucial subject. The Person of the Patriarch is—says the Minister—sacred in the eyes of the Serbs as in those of the Greeks; his expulsion has produced the same impression in Serbia as the profanation of the relics of a saint. On being questioned as to the attitude which would be adopted by Serbia in the matter, Mr. Gabrilovitch stated that, in his opinion, Serbia and Roumania would inform Turkey that her action affected the whole of the Orthodox Church. P.C.I.J. Bull. No. 42 (1925).

100 Survey op. cit. supra at 270.

101 Id, at 271.

102 The Times (London), February 6, 1925, p. 11, col. 3.

103 Telegram from the Greek Government to the Secretary-General of the League of Nations, submitted to the Council on March 14th, 1925. League of Nations, Off. J., Sth year, 579 (1925). Article 11, par. 2 of the Covenant provides: “It is also declared to be the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international peace or the good understanding between nations upon which peace depends.” See also U.N. Charter, Arts. 2, par. 3, 14, 34; 35 par. 1; 37 par. 1.

104 Survey op. cit. supra at 271.

105 According to the Turkish Government, of the two issues raised by Greece, one, that of the Patriarchate, was a purely domestic question for Turkey; while the other, that of the exchange of the Patriarch Constantine, was properly a matter for the Mixed Commission, which had already taken decision in effect permitting the Turkish Government to expel Monseigneur Constantine. Letter from the Turkish Government to the Secretary-General of the League, submitted to the Council on March 14th, 1925. League of Nations op. cit. supra at 579-81.

106 Id. at 580.

107 Report by Viscount Ishii, adopted by the Council on March 14th, 1925. Id. at 579.

108 Id, at 482-84.

109 See p. 35 supra.

110 League op. cit. supra at 483.

111 League op. cit. supra at 483.

112 League op. cit. supra at 484. This “mutual agreement” may give international character to the question but it is not yet proved that on the basis of that unilateral declaration Turkey is bound under international law. The Greek case was, however, as it is explained in the text, that the head of the Turkish delegation, in making his declaration on the maintenance of the Patriarchate at Constantinople, took notice of the declarations made by other delegations on the administration of the Patriarchate by proclaiming them to be “solemn” declarations and considering them as the preliminary condition and counterpart of his own declaration. Thus, Ismet Pasha’s declarations regarding the irremovability of the Ecumenical Patriarchate are clearly in the nature of an international engagement.

113 See note 106 supra.

114 League op. cit., supra at 488.

115 See P.C.I.J., Ser. C, No. 9-11 at 76-80 (1925). Monseigneur Constantine pointed out that the Ecumenical Patriarchate has had its seat in Constantinople from the very beginning and at all times. It continued its work throughout the centuries of Turkish rule, enjoying its rights and privileges in full. The institution of the Patriarchate was based on the decrees of the Holy Ecumenical Synods (see p. 3 supra), on which the canonical law of all Christian Churches is based. Monseigneur Constantine also pointed out that the active clergy of the Ecumenical Patriarchate, Patriarch, Metropolitans, Bishops and other ecclesiastical dignitaries were considered to be, under canon law, members and brothers of the Monastery of St. George in Phanar, in which the Patriarchate established its residence over 300 years ago. They are thus “established” and were subject to the jurisdiction of the courts in Constantinople no matter where they originated or where they officiated. For the same reason, archpriests staying in Constantinople were known in the ecclesiastical phraseology as “Endemountes” (residing in the community), while those who were sent outside Constantinople in the service of the Church to govern provinces were called “Apodemountes” (residing out of this community). The Patriarch further reminded the Council that the jurisdiction of the Patriarchs and Metropolitans during their tenure was defined in the Sultan’s “Berats” (see note 13 supra) and—quoting the actual words—“no civic act of Metropolitans or other suffragans shall be judged elsewhere than in Constantinople.” The rules concerning jurisdiction thus laid down in the “Berats” precisely coincide with the above canonical view concerning the residence of ecclesiastics under the jurisdiction of the Patriarchate. The Prelate finally pointed out that it is inconceivable that the Ecumenical Patriarchate could continue to exist and function without its organs, that is to say, the individuals of which it is composed. P.C.I.J., op. cit. supra at 78.

116 On June 1, the Greek government withdrew its appeal to the League (League op. cit. supra at 488) and on June 8 the League in turn withdrew its request to the Court for an advisory opinion

(Jd. at 854-855). The Council or Assembly could withdraw a request for an advisory opinion. The withdrawal might certainly be made at any time prior to the opening of oral proceedings, and it would seem that it might be made at any time prior to the actual delivery of the opinion in open court. The case of the expulsion of the Ecumenical Patriarch was the only one in which the Council's request had ever been withdrawn. Hudson, *The Permanent Court of International Justice 1920-1942* at 509-10 (1943). The agreement arrived at was as follows: The Turkish representative on the Mixed Commission in a letter addressed to it, a copy of which was handed to the head of the Greek delegation on the Commission, declared that he definitely withdrew the allegations relating to the exchangeability of the members of the Holy Synod. The Ecumenical Patriarch, Constantine, having proclaimed on May 19 his decision to abdicate the Holy Synod, proceeded with the election of a new Patriarch. In other words, the Turkish government obtained the benefit of the *fait accompli* in connection with Monseigneur Constantine and admitted in its turn that the Greek prelates, members of the Holy Synod, were not to be exchanged. The elections were held on the second of June. In spite of certain activities on the part of Papa Eftini, the election was carried through on July 13, Monseigneur Basil Georgiades, Metropolitan of Nicaea, being elevated to the position of Patriarch.

117 It is interesting to mention an incident which occurred over the arrangements for the Greek Prime Minister Veniselos' journey in October, 1930. Mr. Veniselos and his party did not want to land at Constantinople, as the Turkish government desired, but at Ismir. They thought that if their party actually passed through Constantinople, they would feel constrained to call upon the Ecumenical Patriarch. They could not do so, on the other hand, without creating an unfortunate impression in the minds of their Turkish hosts. The Turks replied that the Greeks should have no cause for anxiety, since a meeting between Mr. Veniselos and the Patriarch would arouse no misgiving and create no misunderstanding whatever in Turkish minds. Subsequent events confirmed this prediction. A meeting at Constantinople between the ecclesiastical head of the ancient Greek Church and the political head of the modern Greek State had ceased to be an event of political significance. *Survey of International Affairs*, 1930, at 164-8 (1931). The final act of all the problems arising from the expulsion of the Patriarch, was the execution of the Greek-Turkish agreement of June 10th, 1930. On the basis of this agreement, the Ecumenical Patriarch received his certificate of non-exchangeability towards the end of September, 1931. *Id.* at 327.

118 See Spiropoulos, *Traité théorique et pratique du droit international public*, 119 n. 5 (1933); also Seferiades, *Public International Law*, 211 (in Greek 1925).

119 "Legge della guarantigie." See *Collezione delle Leggi ed Attidel Governo, Del Regno D'Italia*, 1871, at 157-161 (Italy 1871).

120 Article 1.

121 Article 2.

122 Article 7.

123 However, the position of the Pope changed after 1929, when in that year the Law of Lateran granted him political powers.

124 The city has long been the stronghold of the Greek Orthodox Church. Even under Turkish rule the Greek Patriarch was a notable and privileged figure. The Mediterranean and its eastern approaches in the region of Constantinople have been called the moat between Christianity and Islam. This dividing line had been crossed only at Constantinople and Gibraltar. Constantinople, however, had been the capital of the Eastern Christian Church for more than a thousand years, before the Turks came, whereas there is no vital connection between this city and the Muhammedan religion. Mecca has always been the religious capital of the Muhammedan people. Bowman, op. cit. supra at 517. For centuries. it was one of the persistent aims of Russian rulers to gain possession of the city, and religious motives were added to commercial reasons. Constantinople was. the city from which the influences of the Greek Orthodox Church spread throughout Russia.

125 “There would be no security for the rights of minorities in a lawless world, where the very concept of right was displaced by the concept of might as the criterion of state behavior.” Claude, op. cit. supra at 50. But even if the collective identity of national minorities would disappear in the process of assimilation, the human rights movement has already occupied the international interest. Therefore, the human rights principles easily apply to protect religious institutions and their congregations in foreign territories.

126 The existence of the Greek nation under Turkish rule was connected with the privileges of the Ecumenical Patriarchate. It is doubtful whether the Greek nationals and Christianity in the Ottoman Empire could have survived without those privileges.

It is most desirable that the status of the Ecumenical Patriarchate should be definitely determined by international agreements. But the principles governing the status of the Ecumenical Patriarchate, formally recognized and respected, depend on the principles of the Charter of the United Nations respecting human rights and minorities and on international treaties, and not merely on international comity.

127 Few institutions have played a part in the world comparable to that of the Ecumenical Patriarchate (of course, the great rôle played by the Holy See in contributing to civilization could be mentioned). For centuries the annals of the Ecumenical Patriarchate have been identified with

those of Christianity itself in the East. It was the Patriarchate which spread Christianity there; and it was that institution which impressed upon it that impulse which long made it the arbiter of the destinies of humanity in that area. On this account alone, the study of its international rights and duties presents great interest. But the Ecumenical Patriarchate has not a merely historical character. Now, as in the past, it has to play a great rôle on guiding, encouraging, and enlightening Orthodox Christians in a truly Christian life.

128 See p. 23 n. 45 *supra*.

129 The same undesirable results may appear in case the existence of the Patriarchate in Istanbul is imperilled in any other way.

130 The concept of one state exercising some kind of power or other authority in the territory of another state is not new in international law. In 1873, for example, the sovereigns of Khiva and Bukhara granted to Russia the right to build various buildings on the left shore of the Amu Darya River. In addition, the Treaty of Berlin on July 13, 1878, granted to Austria-Hungary the right to exercise maritime police powers on the shores of Montenegro. The Treaty of Versailles of 1919 (Article 363) imposed a duty on Germany to lease to the Czechoslovak state, for a period of 99 years, areas in the ports of Hamburg and Stettin which shall be used for direct transit of goods coming from or going to that state. Greece, in a treaty of May 10, 1923, granted Yugoslavia for 50 years a portion of her territory for the establishment of a free Serbian zone in Salonica. The zone continues to be a part of the Greek territory and under Greek laws and police power, but it is considered as a Serbian customs area and is administered by Yugoslav customs authority (Law of Nov. 2, 1923 (1923) Official Gazette No. 315 at 2255). See Spiropoulos *op. cit. supra* at 142.

Such a grant of territory by Turkey is better facilitated by the fact that the Patriarchate is an institution of Turkish nationality.



Patriarch Gennadios with Sultan Mehmed II